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10 UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 LORENZO ELIAS MENDEZ,

16 Defendant.

No. 1:18-CR-02037-SMJ-1

Sentencing Memorandum

17  
18 Plaintiff, United States of America, by and through William D. Hyslop,  
19 United States Attorney for the Eastern District of Washington, and Thomas J.  
20 Hanlon and Alison L. Gregoire, Assistant United States Attorneys for the  
21 Eastern District of Washington, submits the following sentencing memorandum:

22 I. STATEMENT OF FACTS

23 Defendant was convicted after of a jury trial, at which he testified, of  
24 attempted production of child pornography.

25 Defendant placed a Wi-Fi camera—a pin camera—in the eye of a stuffed  
26 animal in the bedroom of his girlfriend's 14-year-old daughter, and filmed her  
27 surreptitiously. Through that Wi-Fi camera he was able to view video of the 14-  
28 year-old child as she undressed and engaged in other bedroom behavior, to include

1 masturbation.

2 Francis Hernandez, the mother of the victim, had been living with Defendant  
3 for about three years at the time the recordings (that the government was able to  
4 locate artifacts of) were produced. The recordings came to light when Francis and  
5 Defendant took a trip to Las Vegas and went on to visit Defendant's father, who  
6 lived nearby. On the ride there the two got into a minor argument because  
7 Defendant did not want Francis on his phone.

8 When they got to Defendant's dad's house, Defendant took a nap, but Francis  
9 did not. She decided to see what was in Defendant's phone, figuring it was about  
10 the woman he was having an affair with. She opened the phone and all of the  
11 social media applications had been deleted, so she went to the pictures. In videos  
12 she saw what looked like a woman in bed naked. She played a portion of the  
13 video, but it was dark so she moved to a different lighter one. As she was  
14 watching the second video, the girl in the picture turned her head and Francis  
15 realized it was her daughter, E.H. Francis played more videos which depicted her  
16 daughter taking her panties off and masturbating. Francis retrieved her own  
17 iPhone and made a short recording of what she was seeing on Defendant's phone.

18 Defendant awoke to Francis upset, but she indicated she did not feel well.  
19 Francis called her friend (her brother's ex-girlfriend) and asked her to go to the  
20 house Francis shared with Defendant and see if there was a "hidden camera" in  
21 E.H.'s room.  
22

23 The friend agreed and went to the home later that day to look for the camera.  
24 She could not locate anything and then, just when she was going to leave the room,  
25 she noticed a stuffed animal with an eye that did not look right, in that it did not  
26 look like the other eye on the animal. She pulled at the eye and saw a camera lens  
27 just behind it. She took the camera from inside the stuffed animal and some other  
28 cords Francis had told her she was now concerned about and left. Ultimately, she

1 provided the things taken to the Moxee Police.

2 When Francis and Defendant commenced their trip home, Francis called 911  
3 from Seattle. She told the operator about the photos of her daughter she had seen  
4 on Defendant's phone. It was ultimately agreed Francis should go to the Moxee  
5 Police station upon her return.

6 Francis and Defendant then went back to their house in Moxee. Defendant  
7 went upstairs while Francis sat on the couch. Defendant came down to say he was  
8 going to get his kids. Francis used the opportunity to go to the police. At  
9 approximately 2000 hours she told the police what happened and showed them the  
10 video she took, which they download from her iPhone to a Moxee Police  
11 Department laptop.

12 Just hours later, early the next morning the Moxee Police executed a search  
13 warrant at Defendant's home. Sgt. Lewis from the Moxee Police was the officer in  
14 charge who applied for and obtained the warrant and he seized and logged the  
15 evidence. During the search warrant, Defendant's phone was seized from his  
16 nightstand. Many Wi-Fi cameras or spy cameras were located in Defendant's  
17 belongings. Such cameras were located among his personal items in the closet, in  
18 his personal vehicle, and in his patrol vehicle. One such camera was still in the  
19 mailing envelope to Lorenzo Mendez. The FBI subpoenaed the records associated  
20 with the sale of the cameras. The cameras were largely purchased through  
21 Defendant's eBay account using PayPal. In fact, Defendant purchased four  
22 cameras listed as "hidden" or "spy" cameras using the account just between July  
23 21, 2017 and April 26, 2018. Defendant's PayPal account showed the associated  
24 credit cards, used to fund the purchases, were his.

25 Items seized were ultimately taken to the FBI computer forensic expert (FE)  
26 Cory Pritchard. FE Pritchard performed a Cellebrite examination on Defendant's  
27 phone. He reviewed the video Francis Hernandez had made of what she had seen  
28

1 on the phone as well. He saw the videos were stored in a specific directory,  
2 “Storage/emulated/0/DCIM/CAM/HBWY-0022553-CFMPE/video.” FE Pritchard  
3 was able to locate the directory and found the directory was empty. The videos in  
4 question had been deleted between the time Francis had produced the recording of  
5 what she was seeing and the time police had seized the phone.

6 Both FE Pritchard and Francis testified about the video Francis had made.  
7 Both explained, though in different terms, that Francis was recording videos  
8 maintained in the native photo gallery on the Android device. FE Pritchard  
9 explained how the gallery had both the contraband images Francis had made a  
10 recording of and the non-contraband images associated with things like  
11 Defendant’s workouts and his children. The non-contraband images were  
12 intermixed with the contraband images.

13 The contraband videos had been deleted by the time the phone was seized by  
14 law enforcement, but FE Pritchard found literally hundreds of thumbnails or  
15 reduced size versions of pictures and videos that are used as placeholders in the  
16 directory of an operating system or an application for full sized multimedia  
17 content. The thumbnail images depicted E.H., in her room, in her bed or changing  
18 clothes. Of note, FE Pritchard did not locate any thumbnails of Defendant’s  
19 daughter who shared the room with E.H. when she stayed at the house. FE  
20 Pritchard testified a trial about how a smart phone will create and store these  
21 automatically, and deleting the videos does not delete the thumbnails. Further, he  
22 explained some applications generate their own thumbnails and that there was  
23 video editing software (Aviary) on Defendant’s phone as was producing  
24 thumbnails as well as a player (VLC) that was producing thumbnails, when the  
25 images were accessed in those programs.  
26

27 FE Pritchard also testified about the "applications" section of Defendant's  
28 phone and how Defendant had any number of applications that pertained to Wi-Fi

1 cameras to include Wifi DVR W, BVCAM, HDMiniCam, HHMiniCam,  
2 iMiniCam, P2P livecam, and Plug2View. FE Pritchard explained these cameras  
3 broadcast to specific Wi-Fi networks, and in this case, Defendant's saved Wi-Fi  
4 networks included four that were specific to spy cameras located during the search  
5 of his residence and vehicles.

6 Defendant testified at trial incredibly (as determined through the jury  
7 verdict), that he had been framed by Francis Hernandez, as she had access to his  
8 phone. Defendant testified, consistent with the eBay and PayPal records, he did  
9 purchase Wi-Fi cameras, but he purchased them for work, plugging one such  
10 camera into the auxiliary unit in the center console of his police vehicle.

11 Defendant did not have any images or even thumbnails pertaining to police  
12 work. He indicated the cameras did not work, but he continued to order them. He  
13 would just set them aside and order more, since they were inexpensive anyway.

14 Defendant testified he started living with Francis in 2015, and he purchased  
15 a house using a VA home loan, which Francis and her children moved into. When  
16 his daughter was visiting she would stay in the room with E.H.

17 Defendant indicated he did not place any cameras in the house. There was a  
18 surveillance camera, but it covered only the driveway. His phone contained  
19 software/applications for multiple spy cameras. The correlating spy cameras were  
20 found in his belongings and he admitted, he purchased them, using his credit card.  
21 His phone connected to the Wi-Fi networks to enable those spy cameras. His  
22 phone found to have thumbnails from at least three different applications from  
23 hundreds of surreptitiously taken videos of E.H. The videos, which Francis  
24 recorded, were deleted between the time Francis recorded them in the photo gallery  
25 of Defendant's phone and approximately a day later when Defendant was arrested.  
26 Defendant maintained he was not responsible for the videos of E.H. throughout his  
27 testimony at trial.  
28

## II. PSIR OBJECTIONS AND SENTENCING CALCULATIONS

The government agrees with United States Probation that Defendant's Total Offense Level is 41, his Criminal History Category is I, and the resulting guideline range is 324-360 months. The government has no objections to the PSIR.

## III. SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)

In determining the appropriate sentence, this Court should consider the factors as set forth in 18 U.S.C. § 3553(a).

### 1. The nature and circumstances of the offense and the history and characteristics of Defendant.

The circumstances of the offense involve Defendant's repeatedly, willfully using a child, to whom he had access, to produce child pornography. ECF No. 227 at ¶¶ 16-39. Defendant was in a position of trust reference to the victim in this case, with whom he lived. ECF No. 227 at ¶ 48. Thus, the characteristics of Defendant include his willingness to abuse a position of trust.

Defendant's history includes repeated production and attempted production of child pornography. Though he has no previous criminal convictions for sexual abuse, Defendant had a history of purchasing spy cameras, as detailed by the eBay and PayPal records. Further, he had been using those cameras for the purpose of producing surreptitious recordings of E.H. for *at least* six months, per the government's recovery of thumbnails.<sup>1</sup>

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<sup>1</sup> The government indicates at least six months, because Defendant indicated during his testimony that he had switched cellular phones. Thus, there may well have been abuse captured on a device the government did not recover, which would have been consistent with some of the earlier purchase dates of the spy cameras.

- 1           2. The need for the sentence imposed to reflect the seriousness of the  
2           offense, promote respect for the law, and to provide just punishment.

3           The government asks the Court sentence Defendant to imprisonment for  
4           twenty-eight years or 336 months. The government asks that the Court also order a  
5           lifetime of supervised release. Such a significant sentence is necessary to reflect  
6           the seriousness of the offense, promote respect for the law and provide just  
7           punishment.

8           Defendant was a police officer at the time of the offense in question. He had  
9           every reason to be fully cognizant of the wrongfulness of what he was doing and  
10          the likely impact on the victim upon learning she had been filmed when she  
11          thought she was alone in her room. Despite being a former law enforcement  
12          officer, Defendant has demonstrated a complete lack of respect for the law.

13          The gravity of Defendant's crime against a child, particularly given the  
14          abuse of trust that permitted Defendant to access to the victim in this case, is  
15          serious to say the least. In looking to just punishment, the government asks the  
16          Court to consider the impact on the 14-year old victim who had to learn of what  
17          had happened to her in her own room, had move houses shortly thereafter, had to  
18          listen as the defense proffered her own mother produced the images of her, had to  
19          review the images that were produced of her to identify them, and had to testify at  
20          trial. Because of Defendant's actions, E.H. has endured more than any child  
21          should have to.

22          Defendant testified about and E.H. was questioned about a discussion  
23          between the two of them where Defendant told E.H. they were family—he was her  
24          family. The betrayal of trust that accompanies filming a minor aged “family”  
25          member in this way is horrific enough. However, the betrayal was only intensified  
26          when Defendant chose to argue the child's mother had produced the images (on his  
27          phone, using equipment he purchased with his credit card, over a period of six  
28



1 months, intermixed with his other photos). There is one person at fault for these  
2 actions. There is one person who is guilty, and that person is Defendant.

3 3. The need for the sentence imposed to afford adequate deterrence to  
4 criminal conduct.

5 Defendant's offense against the victim was not a discrete act or a momentary  
6 lapse in judgment. The abuse required extensive work to carry out. SA McEuen  
7 testified at trial as to the components of the eye of the stuffed animal and other  
8 materials used and FE Pritchard testified as to the applications and software  
9 Defendant needed to utilize for his offense. Further, the offense extended for a  
10 considerable amount of time. Adequate deterrence will be a significant task. The  
11 government believes a significant sentence to imprisonment will be necessary to  
12 deter Defendant.

13 The government recommends a lifetime of supervised release. The  
14 government is concerned by the recidivism rate for sex offenders generally. *See*  
15 Dept. of Justice, Bureau of Justice Statistics, P. Langan, E. Schmitt, & M. Durose,  
16 *Recidivism of Sex Offenders Released in 1994*, p. 1 (Nov. 2003) (reporting that  
17 compared to non-sex offenders, released sex offenders were four times more likely  
18 to be rearrested for a sex crime, and that within the first three years following  
19 release 5.3% of released sex offenders were rearrested for a sex crime); *Smith v.*  
20 *Doe*, 538 U.S. 84, 104 (2003) (“The risk of recidivism posed by sex offenders is  
21 ‘frightening and high.’”) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)).  
22 Additionally, Defendant committed his offenses on a victim who was particularly  
23 vulnerable, given her relationship with and living situation with the Defendant, as  
24 has been detailed herein.

25  
26 The government is confident the recommended twenty-eight year term of  
27 imprisonment followed by supervised release for life will accomplish adequate  
28 deterrence.



1       4. The need for the sentence imposed to protect the public from further  
2       crimes of Defendant.

3       Defendant poses a danger to the public. Given Defendant's demonstrated  
4       willingness to pursue a victim in a vulnerable state, in his home, who was his  
5       "family," while he was serving as a police officer, the government argues he  
6       should be under the supervision of a United States Probation Officer for the rest of  
7       his life. Additionally, the public, particularly children, require protection from  
8       Defendant and the United States believes the requested twenty-eight year sentence  
9       is appropriate.

10       5. The need for the sentence imposed to provide Defendant with needed  
11       educational or vocational training, medical care, or other correctional  
12       treatment in the most effective manner.

13       Defendant has not identified any needed educational or vocational training.

14       6. The kinds of sentences available.

15       Defendant is subject to a sentence involving a term of imprisonment. The  
16       offense to which Defendant pled guilty carries a mandatory minimum sentence of  
17       fifteen years imprisonment.

18       7. The kind of sentence contemplated by the Sentencing Guidelines.

19       The Sentencing Guidelines contemplates a term of imprisonment.

20       8. Any pertinent policy statements issued by the Sentencing Commission.

21       There are no pertinent policy statements in this case.

22       9. The need to avoid unwarranted sentence disparity among defendants with  
23       similar records who have been found guilty of similar conduct.

24       The government's recommended sentence is mid-guideline. Defendant is  
25       subject to a sentence similar to others similarly situated.

26       IV.    RESTITUTION, FINES, ASSESSMENTS, AND FORFEITURES

27       The Court should impose mandatory restitution, a maximum statutory and  
28

1 guidelines fine, the mandatory \$5,000 special assessment in accordance with the  
2 Justice for Victims of Trafficking Act 2015 (“JVTA”) (18 U.S.C. § 3014(a)), and  
3 enter a final order of forfeiture as to the property identified in the jury verdict form.

4 A. Restitution

5 Restitution is mandatory pursuant to 18 U.S.C. §§ 2259 and 3663A. The Court  
6 should order that Defendant pay restitution in the full amount sought by E.H., as  
7 well as by her mother, Francis Hernandez. *See* 18 U.S.C. 2259(c) (“For purposes of  
8 this section, the term ‘victim’ means the individual harmed as a result of a  
9 commission of a crime under this chapter, including, in the case of a victim who is  
10 under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of  
11 the victim or representative of the victim’s estate, another family member, or any  
12 other person appointed as suitable by the court, but in no event shall the defendant  
13 be named as such representative or guardian.”).

14 Pursuant to 18 U.S.C. § 3664(f)(2), (3), the Court must specify the manner in  
15 which payment of the restitution is made based on the Defendant’s assets and  
16 obligations and may order the Defendant to make a single, lump-sum payment  
17 immediately upon sentencing.

18 B. Fines

19 The government is not seeking a fine.

20 C. JVTA Assessment

21 Pursuant to 18 U.S.C. § 3014(a)(3), the Court shall impose a \$5,000 JVTA  
22 assessment against the Defendant for his conviction for an offense under Chapter  
23 110. The only exception to the JVTA assessment is indigence, which does not apply  
24 to the Defendant who had retained counsel in the instant matter and has substantial  
25 future earning potential. *See United States v. Kelley*, 480 F.3d 1205 (8th Cir. 2017)  
26 (ordering payment of the \$5,000 JVTA assessment on a presently indigent defendant  
27 who was an “Eagle Scout with a college degree” with the potential in the future to  
28

1 be “employed and to earn the money from which he could pay the assessment.”);  
2 *United States v. Shepherd*, -- F.3d --, No. 18-3993, 2019 WL 1925640, at \*3 (6th  
3 Cir. May 1, 2019) (noting Section 3014 does not define the term “indigent,” the  
4 Court indicated in deciding whether the assessment applied it would consider future  
5 earnings, holding the court must determine, “(1) Is the defendant impoverished now;  
6 and (2) if so, does the defendant have the means to provide for himself so that he  
7 will not always be impoverished?”).

8 Section 3014(b) provides that the JVTA assessment shall not be payable by  
9 the Defendant until he has satisfied all outstanding fines and orders of restitution.

10 V. GOVERNMENT’S SENTENCING RECOMMENDATION

11 The government recommends the court impose a sentence to twenty-eight  
12 years imprisonment as well as a lifetime term of supervised release. The  
13 government also recommends the court restitution to the victims.

14 Respectfully submitted this 16<sup>th</sup> day of December, 2019.

15  
16 William D. Hyslop  
17 United States Attorney

18 s/ Alison L. Gregoire  
19 Alison L. Gregoire  
20 Assistant United States Attorney

21 s/ Thomas J. Hanlon  
22 Thomas J. Hanlon  
23 Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on December 17, 2019 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Kenneth D. Therrien, 413 North Second Street Yakima, WA 98901

s/Alison L. Gregoire

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